

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Noa Street-Sachs	Team: Squad #8	CCRB Case #: 201910095	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/13/2019 3:00 PM	Location of Incident: West 145th Street station on the A train line	Precinct: 30	18 Mo. SOL 5/13/2021	EO SOL 12/28/2021	
Date/Time CV Reported Tue, 11/19/2019 9:24 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 11/19/2019 9:24 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Modesto Acosta	01352	956368	TB ATU
2. SGT Joseluis Deluna	03058	929409	TB ATU
3. POM Lucas Hasnay	5339	954920	TB ATU

Officer(s)	Allegation	Investigator Recommendation
A.POM Modesto Acosta	Abuse: Police Officer Modesto Acosta stopped § 87(2)(b)	
B.SGT Joseluis Deluna	Abuse: Sergeant Joseluis Deluna stopped § 87(2)(b)	
C.POM Lucas Hasnay	Abuse: Police Officer Lucas Hasnay stopped § 87(2)(b)	
D.SGT Joseluis Deluna	Abuse: Sergeant Joseluis Deluna failed to provide § 87(2)(b) with a business card.	
E.POM Lucas Hasnay	Abuse: Police Officer Lucas Hasnay failed to provide § 87(2)(b) with a business card.	

Case Summary

On November 19, 2019, reporting non-witness § 87(2)(b) filed this complaint with the CCRB via the phone.

On November 13, 2019, at approximately 3 p.m. in the vicinity of the West 145th Street subway station in Manhattan, § 87(2)(b) who was § 87(2)(b) old on the date of incident, exited the uptown C train and stood on the platform to wait for another train. PO Modesto Acosta, PO Lucas Hasnay, and Sgt. Joseluis Deluna, all from the Transit Bureau Anti-Terrorism Unit, stopped § 87(2)(b) (**Allegation A, B, and C: Abuse of Authority**, § 87(2)(g) § 87(2)(b) was brought to the front of an apartment building where a window had been broken by a group of teens, however after seeing him up close, the super of the building stated that § 87(2)(b) was not the perpetrator. Sgt. Deluna and PO Hasnay failed to provide § 87(2)(b) with business cards (**Allegation D and E: Abuse of Authority**, § 87(2)(g) § 87(2)(b).

§ 87(2)(b) was not arrested or summonsed as a result of this incident. The investigation obtained body-worn camera footage (Board Review 01) and surveillance footage (Board Review 02-05) pertaining to this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Modesto Acosta stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Sergeant Joseluis Deluna stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Lucas Hasnay stopped § 87(2)(b)

It is undisputed that § 87(2)(b) was stopped by PO Acosta, Sgt. Deluna, and PO Hasnay because he matched the description of an individual who had broken the window of an apartment building nearby.

In § 87(2)(b)'s sworn statement, he stated that on November 13, 2019, at approximately 3 p.m., he was standing on the subway platform at the 145th Street station when PO Acosta approached him from behind him, handcuffed him, and informed him he was being arrested for what § 87(2)(b) believed he said was vandalism. § 87(2)(b) is a Dominican male with brown hair and brown eyes who stands 5'5". On the date of incident, § 87(2)(b) wore a red hoodie and a jacket that was navy blue, light blue, and white. The jacket that § 87(2)(b) wore on this day was the same one he wore to his CCRB interview. Photographs of this jacket can be found in IA #33-34 (Board Review 06, Board Review 07).

The officers walked § 87(2)(b) out of the station until they arrived at a building with a broken basement window. The super of the building identified via investigation as § 87(2)(b) who allegedly pointed § 87(2)(b) out, stated that § 87(2)(b) was not the perpetrator (Board Review 8). He added that the individual who broke the window had the same jacket but was thirteen or fourteen years old and wore glasses. PO Acosta uncuffed § 87(2)(b) (Board Review 08).

§ 87(2)(b) provided a brief in person statement to the CCRB Field Team in which he stated that he saw a group of four approximately eleven-year-old Hispanic children kicking and consequently shattering a first-floor window before running into the subway. § 87(2)(b) asked officers standing approximately twenty feet away if they were going to address this. The officers followed the children into the subway and returned with a handcuffed male, identified as § 87(2)(b) § 87(2)(b) wore a white, red, and blue jacket which had the same color scheme as one of the children, however § 87(2)(b) was not one of the individuals involved in breaking the window (Board Review

09). § 87(2)(b) became uncooperative with the investigation and refused to provide additional information pertaining to this incident.

PO Acosta testified that he was walking on his way to his foot post when he heard glass shattering from a window, but he did not see who broke the glass. § 87(2)(b) approached PO Acosta, Sgt. Deluna, and PO Hasnay, identified himself as the super of the building, and then stated that his window had been kicked in and the perpetrator ran into the subway. § 87(2)(b) walked with the officers into the subway and on his way, described that the male who kicked the window wore glasses, a blue and white striped coat, and a red hoodie. § 87(2)(b) walked with the officers for one or two minutes before he pointed out § 87(2)(b) after which PO Acosta lost sight of § 87(2)(b). PO Acosta observed § 87(2)(b) to be a Hispanic male wearing a red hoodie and a blue and white striped jacket. PO Acosta could not remember § 87(2)(b)'s approximate height and did not acknowledge if § 87(2)(b) wore glasses. PO Acosta, PO Hasnay, and Sgt. Deluna approached § 87(2)(b) identified themselves as officers, and stated that they were handcuffing him pending an investigation. PO Acosta handcuffed § 87(2)(b) and brought him upstairs, after which § 87(2)(b) § 87(2)(b) stated that the male who broke the window wore the same outfit but was younger. PO Acosta uncuffed § 87(2)(b). § 87(2)(b) was stopped because he was described and identified as one of the individuals who broke a window.

PO Acosta's memo book noted that at 2:35 p.m., an individual who broken a window was described as wearing a striped blue and white coat. At 2:38 p.m., § 87(2)(b) a Hispanic male, was stopped in regards to this description (Board Review 10).

PO Hasnay's testimony was generally consistent with that of PO Acosta, except PO Hasnay observed approximately three 16-18-year-old individuals running away from the broken glass and into the subway. PO Hasnay only saw them from behind but remembered seeing a puffer winter jacket with blue and white stripes. PO Hasnay stated that § 87(2)(b) did not provide any verbal description of the individuals who broke the window but rather motioned toward the group of children. The officers then walked into the subway station toward the platform and § 87(2)(b) who was primarily interacting with PO Acosta, gestured toward a group of children, one of whom PO Hasnay recognized as one of the members of the group he saw running. This individual wore a blue and white jacket. PO Hasnay believed § 87(2)(b) was one of the perpetrators because § 87(2)(b) § 87(2)(b) pointed him out and the jacket he was wearing. PO Hasnay's memo book noted that at 14:35, a building super stated that kids broke a window at 680 St. Nicholas Avenue, after which a canvas was conducted at 14:37. At 14:40, the suspect was spotted on the platform who matched the description and wore a blue and white jacket, after which the super indicated this was not the right person and the subject was released at 14:45 (Board Review 11).

Sgt. Deluna's testimony was generally consistent with that of PO Hasnay and PO Acosta, except that Sgt. Deluna believed that § 87(2)(b) described the group who had run away as "school kids", specifically two males with hoodies and glasses. § 87(2)(b) went into the train station with the officers but ran ahead and was separated from them such that Sgt. Deluna lost sight of him. The officers located one of the children that the super had described, and Sgt. Deluna later learned that § 87(2)(b) was able to point him out to PO Acosta.

Sgt. Deluna's memo book noted that at 2:36 p.m., the super of a building stated that two Hispanic males wearing glasses and a hoodie jacket broke the first-floor apartment window and ran into the train station. At 2:40 p.m., one male who fit the description was stopped on the train platform and brought to the complainant/victim. The show-up was noted to be negative (Board Review 12).

Stop report STP-§ 87(2)(b), prepared by PO Acosta and approved by Sgt. Deluna,

documented that a § 87(2)(b)-old Black/Hispanic male who stood 5'6" and weighed 160 pounds was stopped at the date, time, and location of this incident. This UF250 indicated that the individual was stopped based on CV/Witness report, the crime suspected was criminal mischief, and the factor that led to the stop was that the individual matched the specific suspect description (Board Review 26).

The body-worn camera footage of PO Acosta, PO Hasnay, and Sgt. Deluna is generally consistent with both the officers' and § 87(2)(b)'s statement. The footage does not depict § 87(2)(b) pointing out § 87(2)(b) but rather begins once § 87(2)(b) has already been stopped (Board Review 01).

Surveillance footage from Famous Fish Market captures three children, likely the ones who broke the glass, running by § 87(2)(b) at 14:32:56. One of the children wears a hoody and a navy-blue jacket with a white stripe. At 14:40:25, PO Acosta walks § 87(2)(b) down the sidewalk. § 87(2)(b) wears a jacket with three different shades of blue and a red hood (Board Review 02). A photo of the footage of the children running can be found in IA #71 (Board Review 13) and a photo of PO Acosta walking § 87(2)(b) down the sidewalk can be found in IA #73 (Board Review 14).

Per Patrol Guide Procedure 212-11, a level three stop, during which a reasonable person would not feel free to leave, may be conducted when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or misdemeanor. The officer must have a particularized and objective basis for suspecting the person stopped of the criminal conduct (Board Review 15).

Per People v. Rosario 278 A.D.2d 176, the Appellate Division of the Supreme Court of New York First Department held that a description a complainant provided which included, inter alia, the specific color and brand of shoes that the defendant wore constituted sufficient justification for a stop and frisk. Thus, the defendant's suppression motion was denied by the court (Board Review 16).

It is undisputed that § 87(2)(b)'s jacket matched that of one of the children who allegedly broke a window. § 87(2)(g)

§ 87(2)(g) PO Acosta, the officer primarily interacting with § 87(2)(b) testified that § 87(2)(b) both provided a description of said jacket and pointed out § 87(2)(b) PO Hasnay testified that § 87(2)(b) gestured to a group of children and PO Hasnay recognized one of them as wearing the same jacket as one of the children he witnessed running from the scene. § 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: Sergeant Joseluis Deluna failed to provide § 87(2)(b) with a business card.

Allegation (E) Abuse of Authority: Police Officer Lucas Hasnay failed to provide § 87(2)(b) with a business card.

It is undisputed that PO Hasnay and PO Deluna each failed to provide a business card to § 87(2)(b)

In § 87(2)(b)'s sworn statement, he stated that PO Acosta was the only officer who provided him with a business card after the encounter (Board Review 08).

PO Acosta testified that he provided a business card to § 87(2)(b) PO Acosta believed Sgt. Deluna provided one as well but could not remember if PO Hasnay provided one (Board Review 10).

PO Hasnay testified that he did not provide a business card to § 87(2)(b) because he believed it was not required since PO Acosta had provided one and § 87(2)(b) did not need three cards. PO Hasnay believed that Sgt. Deluna took out a card but did not know if he gave it to § 87(2)(b) (Board Review 11).

Sgt. Deluna testified that PO Acosta provided § 87(2)(b) with a card but he and PO Hasnay did not. Sgt. Deluna stated the he was going to provide one, but he did not because PO Acosta provided one. According to Sgt. Deluna's understanding of the Right to Know Act, the officer who prepared the UF250 was required to provide a business card which fulfilled the requirement for the remaining officers (Board Review 12).

Both PO Acosta and PO Hasnay's BWC captured Sgt. Deluna holding his wallet and a business card but shuts off immediately after. Sgt. Deluna's BWC does not capture any officers providing business cards (Board Review 01).

According to New York Administrative Code Law 14-174 (b), during a law enforcement activity, an officer shall identify him or herself to the person who is the subject of such law enforcement activity, provide such person an explanation of the reason for such law enforcement activity, and offer a business card to such person at the conclusion of any such activity that does not result in an arrest or summons (Board Review 27).

Per NYPD Patrol Guide Procedure 203-09, an officer is required to offer a Right to Know Act business card upon the conclusion of law enforcement activities, except in cases when a summons is issued or an arrest is made. The exceptions to providing a business card include protecting undercover officers' identities and impeding a criminal investigation (Board Review 17).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been a party (Board Review 18, Board Review 19).
- PO Acosta has been a member-of-service for five years and this is the first CCRB complaint to which he has been a subject (Board Review 20).
- PO Hasnay has been a member-of-service for six years and this is the first CCRB complaint to which he has been a subject (Board Review 21).
- Sgt. Deluna has been a member-of-service for 18 years and has been a subject in three previous CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
- As of February 13, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (Board Review 25).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date